

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB

JULY 19, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Brewster Wallcovering Company

Serial No. 75/005,241

Charles Hieken of Fish & Richardson P.C. for Brewster
Wallcovering Company

Thomas W. Wellington, Trademark Examining Attorney, Law
Office 104 (Sidney Moskowitz, Managing Attorney)

Before Seeherman, Hairston and Bottorff, Administrative
Trademark Judges.

Opinion by Bottorff, Administrative Trademark Judge:

Brewster Wallcovering Company has appealed from the
refusal of the Trademark Examining Attorney to register
LONGWOOD, in typed form, as a trademark for "wallcovering
made of plastic, vinyl or paper."¹ Registration has been
refused on the ground that applicant has failed to submit

acceptable specimens showing use of the mark depicted in the application drawing, i.e., LONGWOOD. Applicant's specimens, consisting of labels which are attached to the goods, appear as follows (in reduced form):²

¹ Application Serial No. 75/005,241, filed October 13, 1995, alleging September 1995 as the date of first use anywhere and date of first use in commerce.

² The wording at the bottom of the illustration reads "Prepasted Wallcoverings and Borders with Coordinating Fabrics."

Applicant and the Trademark Examining Attorney have filed main briefs, and applicant has filed a reply brief; an oral hearing was not requested.³

We affirm the refusal.

Trademark Rule 2.51(a)(1) requires that in an application (such as applicant's) filed under §1(a) of the Trademark Act, "the drawing of the trademark shall be a substantially exact representation of the mark as used on or in connection with the goods." To determine what is "the mark as used on or in connection with the goods," we look to the specimens of use submitted by applicant. See *In re Jane P. Semans*, 193 USPQ 727, 729 (TTAB 1976).

Where the mark depicted in the application drawing is a "mutilation" of the mark, i.e., an incomplete representation of the mark as used on the goods due to the

³ On July 7, 1998, after the briefs had been filed, the Board remanded the application to the Trademark Examining Attorney for possible further action in light of the Court's decision in *In re ECCS, Inc.*, 94 F.3d 1578, 39 USPQ2d 2001 (Fed. Cir. 1996). On August 13, 1998, the Trademark Examining Attorney issued an office action notifying applicant and the Board as follows:

The examining attorney contacted applicant by telephone on August 28, 1998 [sic - should be July 28, 1998?], and offered applicant the option of amending the mark in the drawing to LONGWOOD MANOR to conform to the mark as displayed on the specimens, in accordance with the In re ECCS, Inc. decision. The applicant declined this option.

In view of applicant's clear statement that the mark for which it seeks registration is LONGWOOD, per se, the sort of ambiguity the Court found in *In re ECCS, supra*, is not present in this case.

omission of essential and integral matter, the application is not in compliance with Trademark Rule 2.51(a)(1) and registration must be refused. See *id*; TMEP 807.14(b). In determining whether mutilation of a mark has occurred, we note that:

[i]t is well established that one may use a composite mark in connection with a product and register separately its several elements if each element is used in such a manner as to create a separate and distinct commercial impression from the other elements and does in fact, per se, identify and distinguish this product from the products of others.

In re Jane P. Semans, supra, 193 USPQ at 729. See also TMEP §807.14(b).

In this case, the Trademark Examining Attorney has made of record ten excerpts from the NEXIS® automated database showing that when the term MANOR is combined with another term which, by itself, suggests a geographical location or a surname, the result is a composite, unitary expression which connotes a stately home.⁴ The examples set forth in the NEXIS® excerpts submitted by the Trademark Examining Attorney are "Haxley Manor," "Waddesdon Manor," "Avebury Manor," "Douglaston Manor," "Childwickbury Manor,"

⁴ The Trademark Examining Attorney's NEXIS® search request was MANOR W/50 (STATELY PRE/1 HOME), conducted in the ENTERT library of the ALLNWS file. The search retrieved twenty-seven

Eastwell Manor," "Whatley Manor," Billesley Manor," "Adare Manor," "Wayne Manor," and "Snowhill Manor."

We agree with the Trademark Examining Attorney's contention that, like these examples from the NEXIS® database, the designation LONGWOOD MANOR, as it appears on applicant's specimens of use, is a unitary expression. Although LONGWOOD, alone, suggests a surname or geographical location, we find that it takes on a different connotation when combined with the term MANOR, i.e., that of a stately home called LONGWOOD MANOR.

The manner in which the designation LONGWOOD MANOR appears on applicant's specimens reinforces the unitary commercial impression created by the meaning and connotation of the words themselves. The two words are displayed on a single line and in the same size and distinctive style of script, in upper and lower case lettering with the initial letter of each word capitalized. The words LONGWOOD MANOR appear together as a unit at the top of the label, separate from the generic wording "Prepasted Wallcoverings and Borders with Coordinating Fabrics" which appears at the bottom of the label in much smaller type. These display characteristics further

references, ten of which were made of record by the Trademark Examining Attorney.

support our conclusion that LONGWOOD MANOR is a unitary expression. See *In re Jane P. Semans, supra*.

We are not persuaded by applicant's argument that, because the word LONGWOOD, per se, has a distinct meaning or connotation as a surname or geographical location, it therefore must be deemed to create a separate and distinct commercial impression when used on applicant's goods. The issue is not whether LONGWOOD, when considered alone, has a distinct meaning and connotation. Rather, the issue is whether, when LONGWOOD is used in the manner displayed on applicant's specimens, it creates a separate and distinct commercial impression, i.e., whether it would be perceived as a separate mark, independent of the word MANOR. We find that it would not be perceived as a separate and independent mark.

We have considered the cases relied on by applicant, i.e., *In re The Singer Manufacturing Company*, 118 USPQ 310 (CCPA 1958), *The Procter & Gamble Company v. Keystone Automotive Warehouse, Inc.*, 191 USPQ 468 (TTAB 1976), and *The All England Lawn Tennis Club (Wimbledon) Limited v. Creations Aromatiques, Inc.*, 220 USPQ 1069 (TTAB 1983), and find them to be either inapposite to or easily distinguished from the present case. Unlike the ornamental design mark involved in *In re Singer Mfg. Co., supra*, or

the designation BUMPER TO BUMPER CAR CARE used in conjunction with the house mark PROCTER & GAMBLE in *Procter & Gamble, supra*, or the designation WIMBLEDON used in conjunction with the generic term COLOGNE in *The All England Lawn Tennis Club, supra*, the matter applicant seeks to register in the present case, i.e., LONGWOOD, does not present a separate and distinct commercial impression apart from and independent of the unitary mark LONGWOOD MANOR, and it would not be perceived as a separate mark.

Rather, we find that this case is very similar to *In re Jane P. Semans, supra*, in which the Board found that where the applicant's specimens displayed the applicant's mark as the unitary expression KRAZY MIXED-UP, the applicant was not entitled to register the word KRAZY, per se. In the present case, applicant attempts to distinguish the *In re Jane P. Semans* case by arguing that LONGWOOD MANOR is not a unitary "colloquial" expression like KRAZY MIXED-UP. However, the Board's decision in *In re Jane P. Semans* did not rest on the colloquial nature of the expression KRAZY MIXED-UP, but rather on its unitary nature. "Under these circumstances, it is concluded on the record adduced herein that, on both a visual and connotive viewpoint, "KRAZY" is used merely as a part of the unitary phrase "KRAZY MIXED-UP", and that, as used, it does not

function as a trademark in and of itself." *In re Jane P. Semans, supra*, 193 USPQ at 729.

Likewise in the present case, we find that, as used on applicant's goods, LONGWOOD does not function as a trademark "in and of itself," separate and distinct from LONGWOOD MANOR. Applicant's mark, as demonstrated by the specimens of use, is LONGWOOD MANOR, and LONGWOOD is an unregistrable mutilation of that mark.

Decision: The refusal of registration is affirmed.

E. J. Seeherman

P. T. Hairston

C. M. Bottorff

Administrative Trademark Judges
Trademark Trial and Appeal Board